

Message Text

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TO AMEMBASSY SAN JOSE PRIORITY

C O N F I D E N T I A L STATE 180090

LIMDIS

E.O. 11652: GDS

TAGS:PFOR, PGOV, CS

SUBJECT: VESCO EXTRADITION: QUESTIONS FOR ATTORNEY

REF: SAN JOSE 3400

1. LISTED BELOW ARE QUESTIONS PREPARED BY U.S. ATTORNEY'S OFFICE AND JUSTICE WASHINGTON TO BE GIVEN TO ORTIZ FOR STUDY. JUSTICE WOULD LIKE TO TAKE ADVANTAGE OF HIS TRAVEL TO THE U.S. IN AUGUST TO MEET WITH HIM THEN, IF HE CAN FIT IT INTO HIS SCHEDULE AND IF HE HAS TIME TO RESEARCH THE QUESTIONS PRIOR TO HIS TRIP. AFTER ORTIZ HAS HAD A CHANCE TO STUDY QUESTIONS, JUSTICE WOULD APPRECIATE AN ESTIMATE FROM ORTIZ AS TO THE LENGTH OF TIME NECESSARY FOR RESEARCH AND TIME NECESSARY FOR MEETING.

2. QUESTIONS PRESENTED TO US ARE AS FOLLOWS: SOME APPEAR TO BE REDUNDANT, BUT SINCE THE LIST FROM THE U.S. ATTORNEY WAS REVIEWED BY JUSTICE WASHINGTON, WHICH FORWARDED ADDITIONAL QUESTIONS "TO SUPPLEMENT" THOSE OF NEW YORK, WE HAVE
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CHOSEN NOT TO EDIT THE LIST.

(1) CAN THE COSTA RICAN GOVERNMENT FOR ANY REASON DECLINE TO ACCEPT THE EXTRADITION DOCUMENTS FORWARDED BY THE UNITED STATES AMBASSADOR FOR SUBMISSION TO THE COURT?

(2) CAN THE GOVERNMENT OF COSTA RICA ACT AS AN AMICUS AND ADVISE THE COURT THAT IT SUPPORTS THE CONSTITUTIONALITY OF THE VESCO LAW?

(3) CAN THE DOCUMENTS PRESENTED BY THE UNITED STATES GOVERNMENT BE IMMEDIATELY CHALLENGED BY THE DEFENSE UPON PRESENTATION BY REPRESENTATIVES OF THIS GOVERNMENT AS BEING INSUFFICIENT IN THAT THEY FAIL TO CONFORM TO THE VESCO LAW, OR MUST THE CHALLENGE BE DELAYED UNTIL THE DEFENSE PRESENTS ITS EVIDENCE?

(4) IF A CHALLENGE IS PROPER, WILL THE EXTRADITION PROCEEDINGS THEN BE AUTOMATICALLY SUSPENDED PENDING THE OUTCOME OF THE CONSTITUTIONAL CHALLENGE TO THE VESCO LAW?

(5) IS THE CONSTITUTIONAL CHALLENGE HEARD IN THE SAME COURT OR IN A DIFFERENT COURT, AND IF THE SAME COURT, IS IT HEARD BEFORE THE SAME OR A DIFFERENT JUDGE?

(6) IS ANOTHER ATTORNEY NEEDED TO SUPPORT OUR CHALLENGE TO THE CONSTITUTIONALITY OF THE VESCO LAW?

(7) APPROXIMATELY HOW LONG CAN THE CHALLENGE PROCESS TAKE IN WHAT FORM WILL IT BE? THROUGH WHAT SPECIFIC COURTS WILL IT PASS, IF THE ENTIRE APPELLATE PROCESS IS REQUIRED?

(8) CAN A SECTION OF A COSTA RICAN LAW BE FOUND UNCONSTITUTIONAL AND THE REST OF IT FOUND CONSTITUTIONAL?

(9) HAS COSTA RICA EVER EXTRADITED A CITIZEN? CAN THE UNITED STATES, DIRECTLY OR INDIRECTLY, CAUSE A DELAY IN THE ISSUANCE OF COSTA RICAN CITIZENSHIP TO VESCO PENDING THE OUTCOME OF THE COURT CASE?

(10) ARE THE SPECIFIC CRIMES FOR WHICH VESCO HAS BEEN CONFIDENTIAL

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INDICTED ENUMERATED AS OFFENSES UNDER COSTA RICAN LAW? ARE SUCH OFFENSES SPECIFICALLY COVERED BY THE TREATY?

(11) WHAT ARE THE POSSIBILITIES OF VESCO'S RELEASE ON BAIL BOTH BEFORE THE COURT RENDERS A DECISION AND AFTER THE COURT FINDS HIM EXTRADITABLE?

(12) IS IT POSSIBLE FOR EITHER PARTY TO APPEAL THE DECISION?

SION? THROUGH WHAT COURTS MUST IT PASS? HOW LONG CAN THE APPELLATE PROCESS TAKE?

(13) HAS THE PRESIDENT OF COSTA RICA EVER RULED DIFFERENTLY THAN A COURT ON AN EXTRADITION MATTER?

(14) WHAT EFFECT, IF ANY, WILL THE RECENT DECISIONS UPHOLDING THE VESCO LAW HAVE ON OUR REQUEST?

(15) WHAT EFFECT, IF ANY, WILL THE ALLEGATIONS OF POLITICAL MOTIVES AND THE WILKINS MATTER HAVE ON THE COSTA RICAN COURT AND THE PRESIDENT OF COSTA RICA?

(16) WHAT RECOMMENDATIONS DO YOU HAVE ON THE PREPARATION OF THE EXTRADITION DOCUMENTS?

(17) WOULD IT BE BENEFICIAL FOR ANY REPRESENTATIVES OF THE UNITED STATES DEPARTMENT OF JUSTICE TO BE AVAILABLE IN SAN JOSE DURING ANY PHASE OF THE EXTRADITION PROCEEDINGS?

(18) UNDERSTANDING ALL THE VARIABLES, COULD YOU ESTIMATE A TOTAL FEE FOR LEGAL SERVICES?

(19) WHETHER "MAIL FRAUD", "WIRE FRAUD", OR "SECURITIES FRAUD" ARE EXTRADITABLE OFFENSES A) UNDER THE TREATY, ARTICLE II, PARAS. 17, 19; B) UNDER THE "VESCO LAW", LAW NO. 5497 OF MARCH 22, 1974?

(20) WHETHER THE VESCO LAW IS A VALID LAW UNDER THE COSTA RICAN CONSTITUTION A) WITHOUT TAKING THE TREATY INTO ACCOUNT B) TAKING THE TREATY INTO ACCOUNT?

(21) WHETHER THE ENTIRE VESCO LAW WILL APPLY TO A U.S. CONFIDENTIAL

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EXTRADITION REQUEST.

(22) WHETHER ANY PART OF THE VESCO LAW WILL APPLY TO A U.S. EXTRADITION REQUEST "TO THE EXTENT THAT ITS PROVISIONS ARE NOT CONTRADICTORY TO OR ARE SUPPLEMENTARY TO THE TREATY?"

(23) WHETHER A JUDICIAL DETERMINATION OF THE APPLICATION OF THE VESCO LAW TO A U.S. EXTRADITION REQUEST CAN BE OBTAINED WITHOUT BRINGING A FULL EXTRADITION ACTION BEFORE THE COSTA RICAN COURT? IS THERE A PROCEDURE QUICKLY TO OBTAIN A "DECLARATORY JUDGMENT"? WHAT, IF ANY, PROCEDURE EXISTS FOR APPEAL OF SUCH A DECLARATORY JUDGMENT ACTION?

(24) WHAT QUANTUM OF PROOF WILL BE REQUIRED TO OBTAIN

EXTRADITION UNDER ARTICLE XII "LA PRUEBA LEGAL DE LA CULPABILIDAD DEL ACUSADO"?

(25) TO WHAT EXTENT, IF ANY, WILL SUMMARIES OF SWORN TESTIMONY PREPARED BY U.S. PROSECUTORS BE ADMISSIBLE IN COSTA RICAN COURT? WILL SUMMARIES BE SUFFICIENT?

(26) WHAT DEFENSES MAY BE RAISED BY VESCO, LEGAL ONLY OR LEGAL AND FACTUAL?

(27) WILL THE U.S. BE REQUIRED TO PRODUCE "LIVE" WITNESSES IN COSTA RICA?

(28) WHAT ELEMENTS OF "PROOF" MUST BE SATISFIED OTHER THAN PRIMA FACIE PROOF OF THE CRIMES CHARGED?

(29) WHAT CRIMINAL FRAUD LAWS OF COSTA RICA MIGHT BE DEEMED COMPARABLE TO THE CHARGES HERE?

(30) IS IT LIKELY THAT VESCO COULD OBTAIN COSTA RICAN CITIZENSHIP IF THE EXTRADITION PROCEEDING IS PENDING WHEN HIS FIVE YEAR RESIDENCE REQUIREMENT IS SATISFIED, AND, IF SO, WHAT EFFECT WOULD THAT HAVE ON THE EXTRADITION?

3. EMBASSY MAY INFORM ORTIZ THAT USG (JUSTICE DEPARTMENT) PREPARED TO PAY HIM REASONABLE FEE FOR HIS RESEARCH AND CONFIDENTIAL

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OPINIONS ON THESE QUESTIONS. HOWEVER, THIS REIMBURSEMENT WOULD NOT INCLUDE TRAVEL EXPENSES FROM SAN JOSE TO U.S. IN EVENT MEETING TAKES PLACE DURING HIS PREVIOUSLY SCHEDULED AUGUST BUSINESS TRIP. KISSINGER

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